HISTORICAL EVOLUTION AND DEVELOPMENT
OF COPYRIGHT

INTRODUCTION

When the copyright law came out formally, it was only with the forward technological leap with the invention of the printing press. Since Gutenberg's invention of the Printing Press, a classic invention of the bygone era, mankind has entered into a much higher form of technology marked by the advent of personal computers. Indeed, a lot of water has flown beneath the bridges since then. The law of copyright which commenced with the protection of literary property has witnessed rapid strides in technological developments and with the changing socio-economic dynamics of the society, the worth and value of information as a 'knowledge commodity' and the societal outlook towards it has witnessed a progressive change.

However, few would be aware of the startling facts which led to the emergence of copyright as a discipline of law. Without revealing the suspense or the substance, let us odyssey in exploring the historical origins of this law and discover a historical road which is less travelled by.

A Historical Insight of the Pre Gutenberg Era

Centuries ago, when copyright for the protection of intellectual works did not exist, the owners did not have any control over their works. The works were produced with no profit motive and everyone was free to use a creative work for learning or enjoyment purposes.

During those times, reproducing a text could only be done by hand copying. This was mostly done by monks and did not enjoy much 'audience' as most of the populace was illiterate.
However, apart from the monks, information was passed on in a 'Chinese whisper' fashion, from mouth to ear and the version was likely to get distorted when it was transmitted from one person to another. Indeed, there was little credibility.

Due to the immense labour and time involved in reproducing a work devising a system of copyright was neither practically feasible nor economically viable.\textsuperscript{13}

In other words, history reflects that information was virtually "free" at one point of time. The concept of 'value' to information was alien.

In its origins, the copyright had nothing, absolutely nothing, to do with the encouragement of intellectual creativity or the originality of expression.\textsuperscript{14} In this regard, Stallman, an American software freedom activist has aptly commented:

"The idea of copyright did not exist in ancient times, when authors frequently copied other authors at length in works of non-fiction. This practice was useful, and is the only way many authors works have survived even in part."

Indeed, there was no protection of intellectual works yet works were produced as social reward which came in the form of recognition was most important. Irwin writes that the first form of protection for intellectual literary creation took place in ancient Egypt. The recording of human communication lay at the hands of the priest or holy man who was considered to be the first to lay claim to knowledge. If persons other than the

\textsuperscript{13} By 'system' the authors are referring not only to the laws pertaining to ensure copyright over the work but a wider connotation envisaging a host of institutions such as libraries, adjudicating body, copyright societies etc., and like arrangements.

\textsuperscript{14} Deepak Nayyar, Intellectual Property Right Beyond the Legal Perspective in Law of Copyright: From Gutenberg's Invention to Internet, viii, Prof. A.K. Koul, Dr. V.K. Ahuja eds., Faculty of Law, University of Delhi (2001).
members of the priesthood were overheard reciting the sacred rituals, they were liable to immediate execution.

**The First 'copycat' Dispute**

It may be interesting to note that one of the earliest known disputes in relation to matters concerning reprographic tactics and copyright is as old as the fourth century \textsuperscript{15} which was adjudicated upon by the High King of Ireland. It was in the King Diarmed’s royal court that a dispute between St. Abbot Finnian and his former pupil St. Columba was agreed to be decided upon by the parties.

The facts of the matter reveal that St. Columba had fraudulently copied the work owned by St. Finnian and made unauthorized copies to distribute it for free to the local churches. King Diarmed saw the book as Finnian’s property, the ownership of which entitled Finnian to its product, the copy. The king concluded that both the original and the copy belonged to Finnian observing, ”To every cow her calf, and accordingly to every book its copy.”\textsuperscript{16} Columba was fined 40 head of cattle for making an unauthorized copy. The king’s ruling thus pointed in the direction of the future development of copyright law.

The king based his understanding on the very thumb rule that a calf belonged to the cow wherever the cow was kept which was based on the Brehon Laws relating to the ownership of animals found wandering. The other reason for such a dictum was the fact that paper as well as printing had not been invented then and books were manually copied onto Vellum which was manufactured from calf hide or were bound in calf skin.

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\textsuperscript{15} So Sayeth Soup: The Death of Copyright at http://www.macedition.com/soup/soup _20000627a.shtml

St. Columba never obeyed the decree.

That notwithstanding, it has been said that St. Finnian didn't write the psalter in question, which [was] a book full of psalms, he just owned it\textsuperscript{17} The issue decided by Diarmed was about allowing the wealthy and powerful to control the flow of knowledge, and allowing the commoditization of information. Finnian was by no means the author of the work.

Another view expressed by the Count de Montalembert notes that, "Columbia had a passion for fine manuscripts He went everywhere in search of volumes, which he could borrow or copy, often experiencing refusals which he resented bitterly.||\textsuperscript{18}

Thus, the oldest record where any dispute as regards what we refer to as 'copyright' today exhibit, that the scales of justice was inclined to benefit the owner of the title to the "property" and not the creator or "author" of the work who is the owner in the true sense or the 'first owner of copyright'.

It was only following the invention of the printing press of movable type in 1436 by a German; Johannes Guttenberg that the art of printing spread rapidly throughout Europe. The printing press was a mixed blessing. On one hand where it became easy to produce works in print i.e., to duplicate and to distribute, the other end of the 'new technology' was open to abuse. As a consequence, the author was out of protection as soon as the work got into print which necessitated the need for a copyright regime.

The development of copyright is thus traceable to the rise of a mass market for printed books primarily brought about as a result of Gutenberg's contribution to the literary world.

\textsuperscript{17} See Lucy Menzies, Saint Columba of Iona: A Study of His Life, His Times, & His Influence 22, fats. reprint 1992, (1920).
\textsuperscript{18} The Count De Montalembert, The Monks of the West: From St. Benedict to St. Bernard 108 & n.1 (1867) at 117-118.
The English Crown Copyright—A Chronicled Development

When Gutenberg's invention reached England, the then King Richard III, in 1483, lifted any restriction on foreigners importing manuscripts and books into England and printing them there. As a result there was a proliferation of books as foreigners enjoyed a royal 'license'. Due to all these developments England surfaced as a major printing centre throughout the length and breadth of Europe.

In 1529, the then King of Britain, Henry VIII constituted a 'system of privileges' for the printing of books as a result of which the printing business became a monopoly of the Crown. It was around that time in 1533 that the King prohibited importation of books placing it on the lame justification that England boasted of a number of publishers, printers and bookbinders and hence there was no requirement of importation.

Even France witnessed a similar system of privileges constituting a Printer's Guild Monopoly with the Government's intent to exercise censorship in 'quid pro quo 'for the guaranteed market exclusivity. It was in 1618 that the French Government forced the Parisian booksellers and printers to form a guild which would serve as an instrument of the Government to avail the advantages of the printing press and at the same time exercise censorship in promise for such market exclusivity. This trend continued till the French Revolution of 1789 which abolished all privileges including those of the publishers.

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The Stationer's Company is Born — Pirates protected by Law

In 1556, during the reign of Henry VIII of England stationer's guild comprising of 97 London publishers was constituted into a company known as the Stationer's Company. This company, more specifically, the registered members of the company, had the sole and an exclusive right to reprint works in perpetuity and in the name of some particular member of that company, who forever after had the sole right to publish that work. These registered members of the Shakespearian era had the monopolistic right of not only printing but publishing books i.e., sell copies to the public.

It was more in the nature of a license than a right. Company membership consisted of printers, bookbinders, booksellers, suppliers of paper, and a few others associated with the book trade, but did not include authors. In some cases, 'printers' doubled up as 'booksellers', and were in that sense forerunners of modern publishers.

A year later in 1557, Queen Mary I granted the privilege of regulating the book trade to the Stationer's company of London.

From the stationers' point of view, the Company was necessary for three reasons:

➢ First, to protect their trade from poor workmanship;
➢ Second, to minimize unprofessional practices; and
➢ Third, notwithstanding the protestations to the contrary, limit competition. Finally, the stationers expressed concern that nonmembers of the company were unqualified, ill-trained, and likely to produce poor-quality work.
Further, Printing was subject to the orders of the Star Chamber\(^{20}\), and all published works had to be entered in the register of the stationer's company vide Licensing Act of 1662 which in effect, was a legal instrument to seize books suspected of containing matters hostile to the Church or Government.

Any work which is to be published had to be registered in conformity with the provisions of Licensing Act of 1662\(^{21}\). The work on the register was known as 'copies.' The members claimed the right to publish those copies in perpetuity and the right was later referred to as copyright.

However, the point to be noted is that the Stationers were only publishers and not owners of the material they published. Nor did they enjoy the right to alter the work. The right conferred by the Government on the Guild was purely a commercial deal and did not confer an ownership status upon them unlike the modern copyright which is the 'copyright' in the true sense and spirit of the legal privilege and by virtue of which the first owner of copyright is the creator of the work and not the publisher.

Even though, [in some cases], an author might be paid a fee for the manuscript, [his] proprietary rights over his work and the right to claim royalty from the sale of it, were unacknowledged. The printer who doubled up as the seller as well and who was the sole beneficiary from the sale of such works assumed the designation equivalent to the author at least with respect to proprietary rights, thus in a way was the printer as well as the author as well as the seller, enjoying the economic core of copyright upto its crust.

It was the Licensing Act of 1662, which established a register of licensed books, along with the requirement to deposit


\(^{21}\) http://www.copyrightprotection.com/history.htm
a copy of the book to be licensed. Deposit was administered by the Stationers' Company who were given powers to seize books suspected of containing matters hostile to the Church or Government. Certain designated members of the said company were empowered to conduct search and seizure of books which were unlicensed and commit them to the adjudicating body known as the Justices of the Peace. This body was authorized to ordain imprisonment if it found that the book or books or any part therein contained matters contrary to the Doctrine or Discipline of the Church of England or against the State or Government.

It has been understood that the Licensing Act of 1662 was the first Act in checking piracy. However, attention is drawn to the fact that it was in actuality, what the authors, would describe as 'pirates', a political pressure lobby who were conferred the legitimacy to print and publish books. The stationer's guild was nothing more than 'pirates protected by law' and the powers and functions accorded to them by the statute was promoting what could be best described as a 'licensed theft.'

The very object of the State and Church was preservation of power who colluded to promote a theft encouraged by law. The public interest rationale which exists as a common law principle and independent of statute was not even a consideration. And more important than that which ought to be taken care is the respect for the moral rights of the author such as right to get recognition at least in name if not any valuable consideration was completely absent. With the exception of a few authors such as Sabellico, Petro Francesco da Ravenna of Venice and Palsgrave of England, only printers were entitled to the privileges.
The author had to be influential to secure his legitimate returns on his labour. The leading poet and dramatist, Wolfgang von Goethe, in many ways Germany’s Shakespeare, had to secure 39 privileges for his publisher which he may not have managed had he not been so eminent a writer as well as a minister of the Court and government of Weimar.\textsuperscript{22}

Printing was subject to the orders of the Star Chamber so that the government and the church could exercise effective censorship and prevent seditious or heretical works from getting into print. It was intended, in essence, to control the press and not to protect the rights of the authors.\textsuperscript{23} It was the period of renaissance which was intertwined with the intellectual movement and the nobility, the intellectual climate started to build in, however it was mainly the church which through the decree sought to establish a monopoly over printing and purported to prevent the spread of protestant reformation to maintain their authority over the populace or the citizenry.

The licensing Act was a legal instrument of masking the intention of the nobility and the church to exercise control over the populace by preventing such works to be published which would cause or have a tendency to cause the loss of confidence in the authority of the church which was already losing much of its power due to internal politics and spread of culture leading to the artistic, philosophical, scientific and technological improvements of the Renaissance era. Any writing against the kingdom was viewed as endangering the peace of these Kingdoms and raising a disaffection towards the King and his Government. Moreover, the Government of the day had conferred a right in perpetuity to the members of the Stationer’s Company

which meant after the death of a member, this right to publish would accrue upon the heirs and descendants and the author's rights was nowhere envisaged in constructing this 'rule of perpetuity'. The entire scheme was designed to promote the parallel interests of the publishers and the Government.

In effect, the licensing act limited the scope of piracy by conferring the right to indulge in 'acts of piracy' to the Stationer's guild and imposing punitive sanctions on those who indulged in the printing and selling business apart from the statutorily protected stationer's men.

End of the Licensing Era

However in course of time, as the system began to weaken and old licensing acts expired, the ban against unlicensed printing was removed, as a result of which independent printers started to come up and permeate the safe havens of the Stationer's Company. The licensing acts could not withstand the test of time as they were imbued with illegality, arbitrariness and tainted with inequity by conferring property rights upon those who mechanically reproduced such works as against those who intellectually produced them.

By 1681, the Licensing Act, 1662 had been repealed and the Stationers' Company had passed a by-law that established rights of ownership for books registered to a number of its members so as to continue regulating the printing trade themselves.

The negative effects of the Stationer's empire were increasing with every passing day including exorbitant prices being charged for the works of great men who were gifted with the 'power of the pen.'

In 1695, the Stationer's got a rude shock when the House of Commons refused to renew their monopolistic status conferred by the Licensing Act of 1662. As a consequence, in the
absence of copyright laws, piracy flourished and heavy competition was faced from the Scottish publishers who were not within the copyright jurisdiction of Great Britain.

Thus, with the Stationer’s Guild out of protection and book trade unregulated, 'piracy' spread throughout Britain like a forest fire which continued to burn for fifteen years until 1710.

In order to safeguard their selfish interests, the most powerful group of the monopolistic company - the Booksellers moved the Parliament to create a law to preserve their conferred exclusive status. Inspired by the Lockean theory that every man has a natural right over the fruits of his labour, the Guild claimed to have an exclusive right ad infinitum\textsuperscript{24} with the intention of perpetuating their own monopoly and seeking statutory protection to this effect.

It has also been said that John Locke was the first to recommend that the bookseller's property be limited, either to a fixed term defined from the date of printing, or to a certain number of years after the death of the author. \textsuperscript{25} The Stationer’s also took the plea in their bid to renew the licensing act that "if their Property should not be provided for,... [the booksellers’ livelihood] will be utterly ruined."

The House of Commons rejected the booksellers’ plea, in part, because the booksellers "[were] empowered to hinder the printing [of] all innocent and useful Books; and have an Opportunity to enter a title to themselves, and their Friends, for what belongs to, and is the Labour and Right of, others. Other reasons which motivated such refusal included the poor quality and high cost of the booksellers' editions. Attempts by the

\textsuperscript{24} English equivalent of the Latin maxim 'forever'.
\textsuperscript{25} Rosemary J. Coombe, Challenging Paternity: Histories of Copyright, 6 Yale J L & Human 397 (402).
booksellers to gain new protective legislation failed in 1703 and in 1706.26

After failing to persuade Parliament to extend its powers, the Stationers shifted their legislative strategy, emphasizing the interests of authors over publishers. The product of their renewed effort was the world's first copyright Act, the Statute of Anne, entitled "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned."27

It was this law which is referred to as the Statute of Anne named after the then ruling Queen of England, Anne.

Parliament, through this legislation sought to regulate the book trade and confer upon the 'legally entitled' beneficiaries and benefactors their fair economic rewards for their vital contribution to the literature of their country by conferring upon them the exclusive right to print their works for a limited period of time. The period of protection was fourteen years for works published after the date of enactment.

This came into existence after numerous attempts by the Stationer’s Guild to renew their pact with the Government failed and better sense and sensibility prevailed on the Government which refused to budge from its stance. The members of book trade changed their strategy from asking for licensing renewal to demanding an Act which would protect what they called "literary property" from inroads by both English and foreign pirates.28

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26 L. Patterson, Copyright in Historical Perspective 27 (1968) at 141 -42; 14 HC JOUR 306.
28 See John Feather, Authors, Publishers and Politicians: The History of Copyright and the Book Trade EIPR 1988, 10 (12) 377 (378).
Thus it is observed that the origins of copyright law were influenced by the economics of publication rather than economics of authorship and there is not an idea of doubt that the origin of copyright much before the coming of Statute of Anne was not for the "encouragement of learning" but discouragement of "learning" such 'knowledge' which went against the church or the government by regulating the print and exercising rules of censorship.

It was only the Anne's statute by virtue of which the history of common law on copyright witnessed a paradigm shift from the vice of monopolistic empire set-up under the auspices of the Stationer's guild and accorded the much deserved and a much, awaited right to the authors of published works, thus not only removing barriers to knowledge or information uncensored, portraying the naked truth and promising legislative security, but also achieving the twin objective of serving a larger goal of humanity of enlightening the masses and rewarding the creator under the umbrella of legal framework, in the process 'promoting the engine of free expression.'

It was only when the British Parliament passed the Queen Anne's Statute of 1709 that for the first time in history, the rights of the authors over their work came to be legally recognized, and the concept of 'public domain' was established, though not explicitly.

Alongside, the Stationer’s members were given such exclusive right for works anterior to 1710, which, had already been sold to them. It has been said that it was the Stationers who were responsible in pushing the draft to assume a legal enforceability for 'a bird in hand is better than two in the bush' meaning that the Stationers could exercise control till a period of twenty years for works which had been sold to them anterior to the date of enactment after which they shall enjoy the
common right of perpetuity of those works published subsequent to the passing of the Act.

Prior to Statute of Anne, copyright was recognized by the common law which continued ad infinitum for unpublished works but after copyright developed as a statutory right, this unpublished right got extinguished upon publication as the very nature and purpose of the law of copyright was to reward the author for a limited period of time provided by the statute after which the work would ultimately fall in the public domain and become public property as the eventual objective of the law on copyright is to add to the knowledge bank or the creative library of the society.

Whether Queen Anne’s statute abolished this common law copyright which was stimulated by the rule of perpetuity remained an unanswered question by the statute and while tracing the history, subsequent to this grant of this statutory copyright, one shall observe that this dilemma proved heavy for the English Courts and the law in this regard was finally settled with the judicial pronouncement of Donaldson v. Beckket in 1774.29

**Statute of Anne, 1710 - A Milestone is achieved**

The Copyright law embarked as a codified body of law when the Statute of Anne received the assent of the British Parliament way back in 1710 and came into force on the 10th of April, 1710. It was the first legal articulation of real copyright.

Queen Anne’s statute conferred upon the authors for the first time, the statutory right to benefit from their literary works by conferring upon them the sole right to print their works, for a limited period of twenty-one years for works published before the date of enactment which was 10th April 1710, those works

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which had not been transferred to the Stationer’s Guild. Those works which were published subsequent to the enactment of the statute of Anne enjoyed a protection of fourteen years.

Prior to the Statute of Anne, the common law of England recognised a perpetual right of property in the author’s "copy" in the manuscript. As printing presses were licensed and in the hands of the Stationers’ Company, the only way an author could have his or her work printed, was to assign the "copy" to a member of the Company.

Statute of Anne ‘was designed to destroy the booksellers’ monopoly of the book trade and to prevent its recurrence/ and sought to divorce the evil of privileged censorship from free expression, thus facilitating an equilibrium between the rights of the authors and the rights of the public to have access to print material.

It has been described that 'The statute of Anne marked the end of autocracy in English Copyright and established a set of democratic principles: recognition of the author as the ultimate beneficiary and the fountainhead of protection and a guarantee of legal protection against unauthorised use for limited times, without any elements of prior restraint of censorship by government or its agents' because prior to the enactment of the statute, common law provided that the sole right of printing and publishing shall continue ad infinitum.”

The Statute of Anne, was a small statute comprising of just 11 parts.

The very nature and purpose of the statute was two fold-

➢ One, to promote learning.

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Second, to prevent any other person save the author to print or reprint the book/literary work for a limited duration of 21 years in its retroactive operation.

The term of copyright was designated to last for fourteen years commencing from the date of publication and "no longer" which would return to the author for a fixed duration of another fourteen years if he were living at the expiry of the first term.

However, the Statute of Anne came with a rider by permitting in what it described as a 'bookseller' printer' or 'any other person', to print, reprint or import with the assent of the proprietor in writing, evidenced with the signature of two credible witnesses for such an assignment to be valid.

The most important part is perhaps the fifth clause which mandated that 'nine' copies of each book upon the best paper, shall be kept in nine libraries (one copy each), of the stated Universities including the Royal Library for the purposes of dissemination of knowledge to the public at large, and a stringent monetary penalty apart from forfeiture of such material was attached, in case of non-compliance of the aforementioned clause. Interestingly, the United States law on copyright makes it a legal obligation on the part of authors to deposit two copies or phono record (depending upon whether it is a literary or a musical work) of their work at the Library of Congress within three months of 'publishing' such work and prescribes fine as a punitive action for noncompliance.5' The deposited copies are used to build the collection in the Library of Congress and for exchange of domestic and foreign libraries.31

At the same time, it was expressly provided in the Anne's statute, in the nature of a clarification, by means of a 'non obstante' clause that nothing in the statute shall prejudice or

confirm any right that the specified universities or any person have or claim the printing or reprinting of any literary material already printed or about to be printed.

Thus, it is observed that at the time when the foundation of the copyright law was being laid down, the legislative intent was to further promote dissemination of knowledge but at the same time the private right of the author was being respected and protected. In essence it was a fine balancing act in which the author's right was secured and at the same time, his right was not impeding the encouragement of learning.

'Ignorance of law' at that time was considered a good defense to the punishment of forfeiture and penalties which would have made any person indulging in the printing activity without the consent of the author liable, for those books published subsequent to the enactment of the Statute of Anne, if such a book had not been registered with the Stationer's register. This was a legal mechanism by which the authors would be committed to comply with the registration formalities of the book as the Act was primarily enacted for the advancement of learning and did not confer upon the author the indulge in printing activity on the sly. Therefore, in essence, those books which were not registered did not enjoy statutory protection and were open to the greed of the Stationer's members and other 'pirates' as well.

The above view has been endorsed in Midwinter v. Hamilton (1748) where the Court of Session held that only books entered in the Stationers' Register were protected at all (even for 14 or 28 years) under the 1710 Act, and they arrived at the same conclusion in Millar v. Kincaid (1748).32 Another interesting feature of this first copyright statute that the statute did not

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32 John Feather, Authors, Publishers and Politicians: The History of Copyright and the Book Trade, EIPR. 1988, 10 (12) 377, 379.
protect unpublished literary property which was granted almost two centuries later by The Copyright Act, 1911. Furthermore nowhere in the statute will we find the word 'copyright' though it rolled the stone of the law of copyright as we perceive today.

This common law statute continues to serve as a canvas on which subsequent legislations derive their fundamentals this first copyright legislation continues to impact and influence the copyright law of, not only common law countries such as India but even countries such as the U.S. wherein the framers of the U.S. Constitution relied on this statute when drafting the Copyright Clause of their Constitution which reads as:

"The Congress shall have Power... to promote the Progress of Science... by securing for limited Times to Authors... the exclusive Right to their respective Writings."

Moreover, the Congress directly transferred the principles from the Statute of Anne into the copyright law of the United States through a recommendation to the states to enact similar copyright laws, and then in 1790, with the passage of the first American federal copyright statute. In a sense, the statute served as a blueprint to architect the laws on the other side of the Atlantic as well.

At this point, it would be worthwhile to put forth our views which highlight the contradictory or "confusing" legislative intent.

Firstly, the Statute opens by introduction of the legislative intent expressing that the Act is for the "encouragement of learning" which reflects the background that this engine of political and religious censorship was to be shown a red signal and the engine of free expression was to be throttled for the

33 Section 17, Copyright Act, 1911.
34 US Constitution. Article 1, section 8, cl. 8.
progress of humanity which had gotten retarded due to the old licensing acts.

The statute goes on to acknowledge that the works of authors were published by the printers and booksellers without their consent and 'too often' to ruin them and their families and it is in the interest of the state to encourage the spread of knowledge that authors should be legally permitted to produce the works for a limited period of fourteen years which is renewable but it also used open ended words like 'of late' to describe the time period of this so called 'legal act' of the Stationer's guild in which they produced such works of authors minus their approval.

The relevant paragraph reads as:

"Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting, and publishing, or causing to be printed, reprinted, and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families; for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books; may it please your Majesty, that it may be enacted, and be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same."

In fact, the strange irony is that the approval was never required and moreover rare would be a businessman is so gentlemanly that he shall be so kind enough to take permission

35 Statute of Anne, 1710, 8 Anne, c. 19 (1710), Paragraph 1.
from the authors of works in order to publish when they have acquired such a right through a statutory monopoly conferred upon them by the Government of the State and coupled with the fact that they are not legally obligated to the authors for any proceeds from the sale of such works but were only legally accountable to the Government for exercising censorship and preventing the sale of such works which the Government would describe as 'heretical, schismatical, blasphemous, seditious and treasonable.36

The other matter of paradoxical representation is that whereas on one hand the State attempts to secure the due right to the authors by conferring upon them the right to print their works, on the other it has described such a 'larcenous misconduct' of the booksellers and printers as a 'liberty' of printing, reprinting, and publishing, or abetting the above acts.

In our view it was not a 'liberty' but a 'license' which the State had conferred upon the Guild by means of licensing acts such as one of 166211 which enabled them to censor 'objectionable' content. As stated earlier, the Stationer's were nothing more than 'pirates protected by law.'

The third major concern was the fact that whereas it has been acknowledged in the very first point of the statute itself that the Stationer's guild has deprived the authors of their legitimate dues to the extent so as to not give them a minimum consideration of bread and butter and in the process ruin them as the words read...`and too often to the ruin of them and their families'; yet they were conferring a limited duration for a paltry term of fourteen years and maximum extension of the same period for works published retroactively.

It meant that that the author and his family could be spared from getting 'ruined' for a statutory term of twenty-eight

36 See Licensing Act, 1662, 14 Chas 2, c. 33, 1662 [pars 1].
years which was limited for a period of fourteen years for the family if the author expired before the first term expired. So to say, that family could not claim royalties in the unfortunate event of the death of the author. One possible explanation could be that the legal maturity of considering copyright as a property right was lacking.

Notwithstanding, the Act was a respite to ameliorate the conditions of authors by securing them their just dues.

The Act was aimed at encouragement of learning and spread of knowledge and preservation of culture which can be inferred from the fact that the Book’s title had to be registered with the Stationer’s register and nine copies of the same was to be deposited in libraries of the listed universities with an express prohibition that such Universities shall not have a right to print such books which have been deposited and the book are meant only for accessibility and advancement of knowledge.

The statute had another positive angle as regards the economics of publishing involved in that it tilted the same in favor of the citizenry and any person could now bring a complaint against the bookseller or the printer if they charged a price which such a person conceived to be too high and unreasonable.

In order for such a complain to be effectuated and redressed some of the highest ranks of the nobility, clergy, Vice- Chancellors of University and the Judiciary were authorized and empowered to limit and settle the price of every such printed book according to their best of their judgments or judgment as the case may be, in their respective jurisdiction, with costs to the complainant to be borne by such defaulting bookseller or printer. Furthermore, such defaulting party was to give a public notice in the Gazette of the settled price and enhanced
punishment was prescribed for repeating this offence after the price was settled and the defaulting party was brought to book.

Lastly, it was stated as a proviso that if the author after the expiry of the statutory period could renew for another term of fourteen years if he survived the former period granted which constitutes one of the strongest arguments against the system of copyright being limited to a paltry term and that the author could not reap the fruits of his labour throughout his own lifetime leave alone the concern for his family, heirs and descendants.

Queen Anne’s Statute was the primal statute which opened the gates for the law of copyright in its true sense which afforded protection to the authors for their creative works through sacrificial labour as its prime objective rather than protecting the monopoly of publishers who indulged in unjustly enriching their pockets under the sanction of law at the expense of such 'men of letters',

The statute was indeed a turning point in the history of copyright law’s

**HISTORY OF COPYRIGHT LAW IN INDIA**

Copyright history in India finds its origin from England; as the first Copyright Act of 1847 that was introduced in India by British was nothing but Indian version of English Copyright Act of 1842. To make the study of the history of copyright law in India easier and comprehensible, it has been divided into two parts.

a) Pre independence copyright law in India

b) Post independence copyright law in India

**Pre Independence Copyright Law In India**

From 1847 to 2015 the history of Copyright Law in India spans for about 168 years. Copyright first entered India in
1847\textsuperscript{37} through an enactment by British, during the East India Company's regime. At the time of its introduction in India, copyright law had already been under development in Britain for over a century and the provisions of the 1847 enactment reflected the learning from deliberations during this period. According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years; but in no case could the total term of copyright exceed a period of forty-two years.\textsuperscript{38}

The government could grant a compulsory license to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. Suit or action for infringement could to be instituted in the "highest local court exercising original civil jurisdiction?" The provisions of this Act were in force till the Copyright Act, 1914 was enacted. Thus, in its very first avatar, copyright had arrived in India as a modern law that was both abstract (encompassing "all works" of literature and art) and forward looking (in the way that it sought to accommodate both existing and new forms of subject matter). As a result, many of the philosophical debates over the nature of 'literary property' that had animated the initial years of copyright development in Britain were conspicuous by their absence in the sub-continent; this enactment created the conceptual milieu that eased the passage of succeeding legislations.

Issues relating to copyright have been subject matter of international discussion which has been regulated by various Conventions. The Berne Convention for Protection of Literary and Artistic Works, which is an international copyright treaty was first adopted at Bern, Switzerland on September 9, 1886

\textsuperscript{37} The Copyright Act of 1847 (India); passed by the British Parliament, in the name of Queen of Britain. It was enacted mainly for the protection of East India Company's copyright interests.

\textsuperscript{38} The Indian Copyright Act, 1847 (Act XX of 1847).
and was signed for India on April 1, 1928. It required its member nations to provide certain exclusive rights to the authors of Literary and Artistic works such as right to make reproduction, communication to the public, translation and adaptation.

The Berlin Act was passed in 1908 to revise the Berne Convention has to provide additional protection to authors due to the new technologies like photography, sound recordings and cinematography. The convention afforded authors even more power over their works by emphasizing their rights of exclusivity over their works. Authors could authorize how their works were to be published and used.

The Copyright Act of 1914 was the first 'modern' copyright legislation in India. Ironically it was a complete 'copy' of the English Copyright Act of 1911 with suitable modifications to make it applicable to the then British India. This Act continued to protect Copyright even after a decade of attainment of Independence by India.

The Rome Act, 1928 revised the Berne Convention to establish moral rights of the authors to claim authorship of their work and to object to any distortion, mutilation, any modification that would threaten the reputation of the author.

**Post Independence Copyright Law in India**

The Copyright Act of 1957 came into force on the 21st of January, 1958. This was the first Copyright Law of the Independent India. The Act besides consolidating and amending the law relating to Copyright, also introduced a number of changes and new provisions such as provisions for setting of a copyright office under the control of the Registrar of Copyright for the purpose of registration of books and other works of art, and establishment of a Copyright Board to deal with certain kinds of disputes pertaining to copyright. This Act has been
amended five times since then, in the years 1983, 1984, 1992, 1994 and 1999 to keep the copyright regime in India in tandem with latest technologies and challenges to copyright protection posed by them.

India signed the Geneva Convention for Protection of Producers of Phonograms, 1971 on February 12, 1975. This convention protects producers of Phonograms against unauthorized duplication of their phonograms & sound recordings, consequently, to deal with the growing problem of piracy of recorded music.

This Universal Copyright Convention was first adopted at Geneva on September 6, 1952 but India signed the convention on April 7, 1988, after its revision in 1971. This convention was largely welcomed by developing countries and the Soviet Union. This was to ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts, to facilitate a wider dissemination of works of the human mind and increase international understanding.

After attaining Independence, The Copyright (Amendment) Act, 1983 was the first amendment made to the Copyright Act, 1957. This Act was brought to give effect to the Berne Convention and UCC, providing for grant of compulsory licenses for translation and reproduction of works of foreign origin required for the purposes of teaching, scholarship or research, to make such foreign works freely available for publication and ensure their availability at reasonable prices. Further, Provisions were made for publication of unpublished works where the author is either dead or unknown; the Copyright Board was empowered to settle disputes and Copyright was extended to the lectures made in public.

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Within two months of the coming into force of the 1983 Amendment, another amendment was brought to the Copyright Act to deal with the piracy prevailing in video films and records. The Copyright (Amendment) Act, 1984 came into force with effect from October 8, 1984. The Act deemed Video films to be cinematograph films; and introduced definitions of Duplicating Equipment and Computer Programs. Import of infringing copy of cinematographic film even for private or domestic use of the importer, was made to be considered an infringement; possession of such copies was made punishable; also Police was given powers to seize without warrant such copies. Infringement of copyright was made an economic offence under the Economic Offences Act, 1974.\(^40\)

Another amendment was brought to the Copyright Act, 1957, increase the term of protection of copyright works from 'fifty' to 'sixty' years. The term of protection was increased in literary, dramatic, musical and artistic works; anonymous and pseudonymous works; posthumous works; Photographs; cinematograph films, records, government work, works of public undertaking and international organization these amendments were brought in by copyright (amendment) bill, 1992 which retrospectively came into effect from December 28, 1991.\(^41\)

The Copyright (Amendment) Act, 1994 which came into force on 10th May, 1995 effected many major amendments in the Copyright Act of 1957. This has made the Indian copyright law, one of the toughest in the world. Changes were made in the definition of 'adaptation' and 'author', 'communication to the public', 'composer', 'sound recording', 'publication' and 'computer program'. It prohibited the sale or hire or transfer of the computer program without specific authorisation of the

\(^{40}\) The Copyright (Amendment) Act, 1984 (Act 65 of 1984).
This amendment also introduced the idea of copyright societies and moral rights for authors.

The World Trade Organization was established in Geneva, Switzerland on January 1, 1995 after the Uruguay Round Negotiations (1986-1994); India is a member since its inception and undertook to follow TRIPS obligations. The Agreement on Trade-Related Aspects of Intellectual Property Rights came into effect for developing countries on 1 January 2000. The obligations under TRIPS agreement were to comply with the Berne Convention and provide protection against unauthorized copying of sound recordings; provide a specific right to authorize or prohibit commercial rental of these works. It also provides a detailed set of requirements relating to the enforcement of rights which, in sum, require remedies and procedures that effectively deter piracy.

In July 1996, the U.S. initiated WTO dispute settlement procedures over India’s failure to implement its TRIPS obligations. The final panel report on this case was issued in August 1997, and ruled that India had failed to meet its obligations under the TRIPS agreement. Indian officials pledged to bring Copyright Act in compliance with TRIPS.

Finally, Copyright: (Amendment) Act, 1999 was passed to bring Indian Law in compliance with the TRIPS Agreement, thereby providing Commercial Rental rights for software; increasing duration of performers rights from 25 to 50 years; power to the government to make broadcasting and performers rights applicable to some companies in other countries and to restrict foreign broadcasters and performers and introduction of inter-operability fair use provision for softwares. 43 This came

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42 The Copyright (Amendment) Act, 1994 (Act 38 of 1994).
43 The Copyright (Amendment) Act, 1999 (Act 49 of 1999).
into force with effect from January 15, 2000 and still continues to be law of the land.

The Copyright Act was further amended in 2012 to make it more relevant in the digital world. Three new sections 2(xa), 65A and 65B were introduced which deal with DRM. The changes bring the Copyright Act into conformity with the provisions of international conventions like TRIPS and the WIPO Copyright Treaty.

With spurt of copyright violation over the Internet through Peer to Peer file sharing websites and applications and increase in attempts to curb digital rights management, United States passed Digital Millennium Copyright Act, 2000 in tandem with WIPO Copyright Treaty (WCT) and WIPO Performers and Phonograms Treaty (WPPT), both adopted in 1996. Indian Copyright Law which is considered as one of the best copyright protections in the world has proposed an amendment to bring the existing Copyright Law in compliance with WCT and WPPT.

EVOLUTION AND DEVELOPMENT VIS-A-VIS TECHNOLOGICAL ADVANCEMENTS

Evolution of the concept of copyright has been co-relative to evolution of technology. Piracy is found to be co-extensive with advancement of technology. From the jurisprudential point of view, it may be rightly said that a co-jural relationship between piracy on the one hand and advancement of technology on the other hand exists, that is to say, more the technical advancement more the Piracy.

It was the invention of Guttenberg back late in 1436, which marked the entry point for concept of copyright, since then the globe witnessed a new phase of technological advancements namely, Printing, Copying, Lithography, Electricity, Sound Recording, Tape Recording, Photography, Cinematography, Telecommunication, Live Radio & Television.

One wonders what Sir Bacon, would have to say about all of these technological advancements, had he been alive today. If printing, gunpowder and magnet alone changed the whole face and state of things throughout the world, technologies enumerated above, have certainly rocked the world.

From time immemorial music has been used and enjoyed only as a source of entertainment; economics related to it was purely consequential and meager. It is pertinent to mention here that the music enjoyed till late 18th Century basically comprised of Live Performances by Singers, Musicians, Actors and Artists. But ever since the advent of recording of the music, Piracy of the same became possible and thereafter, the instances of Piracy have been found.

Music Piracy is something that has been around for decades, since the advent of the tape recorder. For much of the music industry's lifetime, piracy was not a serious problem. From the onset of recorded sound through the 1960s, people bought vinyl records at record stores. In the good old days, people played records at home and at gatherings and used to borrow each other's tape records and copy them on another tape. It was the cassette which became the favored weapon of music pirates, who were unaware that they were doing anything illegal.\textsuperscript{44} The purpose for piracy via recording was to put one favorite songs on one tape, and eliminating need to have to buy

\textsuperscript{44} See music Piracy (Manila Standard, May 5, 2003)
the entire record. Although the quality was lost when re-recording was made.

The advent of magnetic tape as a recording medium began to change things, primarily after blank microcassettes went on sale. Some recording industry executives took issue with people duplicating cassette tapes, but soon they had bigger problems to worry about, especially when CDs arrived and sound became digital. The coming of Compact Discs was a blessing of sorts for music lovers, since the sound quality is supposedly as close to perfect as one may get. But people still copied from CD to cassette tape, and the problem inherent in tapes remained. The possibility to copy CD to CD came through CD burners which allowed people to rip music off CDs and onto personal computers, without compromising the quality brought a new impetus to music piracy.

The advent of new digital encoding format in form of MP3, enabled music recording in smaller sizes (1/10th of the earlier size) and thereby, more number of songs in a MP3 Disc. The MP3 gave internet users the ability to easily and quickly download unauthorized copies of numerous musical and dramatic works. MP3 technology compresses music files, which were traditionally quite large, allowing rapid downloading onto a computer's hard-drive.

Soon, record companies began selling 'special' music CDs to consumers who thought they were getting ordinary compact discs. When people played these CDs on their computers, what happened in many cases was the equivalent of a spyware nightmare: Programs froze up, applications slowed and a series of hidden files that were the source of the problem proved to be nearly impossible to uninstall. Why would a company do this to its customers?
The answer comes down to copyright. The digital revolution that has empowered consumers to use digital content in new and innovative ways has also made it nearly impossible for copyright holders to control the distribution of their property. It's not just music, but film, video games and any other media that can be digitized and passed around.

Then further advancements in the shape of Digital Video Discs and Blue-Ray Discs which could record and contain high quality music in large quantities within one disk. Music is being recorded and sold in contemporary times in Memory Cards, USB drives or Pen Drives; also, the music companies have now started to sale music files downloadable over the internet and via 2G GSM and CDMA networks through mobile service providers. In all the technologies ranging from 'CD' to `downloadable from internet' the quality of recording is maintained and such file can be easily copied into another medium and unlimited copies of such music could be made without compromising the quality and in no time and at very low costs...this advancement has led to rapid increase in piracy of music.

Add the Internet and peer-to-peer sites (P2P) to the equation, and record executives really started to worry. People were suddenly able to duplicate and share music with an almost unlimited about of users over the Internet, giving many the chance to download songs, albums, even entire discographies without paying a dime. With the value of music changing so rapidly, how would the music industry react?

The advent of computers and then internet has raised the capability of man to pirate. Since the advent of music piracy the world of internet has been and could be considered to be ever protruding; to support this argument some instances in the history of internet like Napster.com, Grokster.com, Kazaa.com, MP3.com, Songs.pk, Indiafms.com, Youtube.com, Facebook.com
and now the latest Bittorrent, Utorrent and Limewire facilitating peer to peer sharing are evident to show how opportunities to pirate have increased with time. With peer to peer sharing networks (PEER TO PEER networks), where one user has the ability to download a file from another user without a main server, gave individual’s one stop shopping for music files that had been copied in violation of copyright law and made available on the internet to anyone, in the world.

The advent of digital media and analog/digital conversion technologies, especially those that are usable on mass-market general-purpose personal computers, has vastly increased the concerns of copyright-dependent individuals and organizations, especially within the music and movie industries. The advent of personal computers, smart phones, tablets, etc as household appliances has made it convenient for consumers to engage into pirate activities. This, combined with the Internet and popular file sharing tools, has made unauthorized distribution of copies of copyrighted digital media (digital piracy) much easier. It can be further said that music piracy has been worst hit by the increase in the use & misuse of internet and World WideWeb.

The evolution of internet piracy is a relatively new aspect of international copyright; it arose almost a hundred and twenty years after the Berne Convention. The internet poses an international copyright problem that is much larger than has ever before been conceived.

The menace of music piracy is most prominently expanding through the virtual world i.e. the internet. The current trends are that the average worldwide
music sales have gone less than 50%, the music is being downloaded and shared throughout the world wherever access to internet is available except by few loyal music lovers.

Rosemary Coombe tries to explain the plight of music industry in US and Canada in the following words:

"Although copyright applies to many cultural expressions, its extension into the field of musical creativity manifests most clearly the complexities of the law and the range of its cultural influence. From its origins as a right to prohibit the unauthorized copying of sheet music, musical copyright has dramatically expanded. With respect to musical compositions, the law now enables copyright holders to enjoin public performances, broadcasting, the making of sound recordings in any medium, and, in many jurisdictions, the sharing of music with the aid of digital technology. Each of these exclusive rights can be separately assigned or multiply licensed for distinct purposes, potentially creating tangled webs of prohibition that freight the use of music with dangers of litigation. More and more performances are now considered public (for example, songs sung at family meals in restaurants, at children's day care centers, and at summer camps), and the reproduction of even short samples of a song is potentially an infringement if the original work is recognizable."  


46 Rosemary Coombe, "Making Music in the Soundscapes of the Law‖ in Joanna Demers, Steal This Music (University of Georgia Press, Athens, Georgia, 2006).
Similar is the plight of music industry in India increasing day by day with massive usage of advanced technologies and internet. The distribution of digital content over the internet via file sharing networks has made traditional copyright law obsolete in practice thus requiring better and effective law to provide protection against such violation and infringement of copyright.